

Senate File 347 - Introduced

SENATE FILE 347
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO SSB 1131)

A BILL FOR

1 An Act relating to record checks of prospective and current
2 health care employees and certain students.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135B.34, subsection 2, Code 2013, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *Ob.* (1) If a person being considered for
4 employment, other than employment involving the operation
5 of a motor vehicle, has been convicted of a crime listed in
6 subparagraph (2) but does not have a record of founded child or
7 dependent abuse and the hospital has requested an evaluation
8 in accordance with paragraph "a" to determine whether the crime
9 warrants prohibition of the person's employment, the hospital
10 may employ the person for not more than sixty calendar days
11 pending completion of the evaluation.

12 (2) Subparagraph (1) applies to a crime that is a simple
13 misdemeanor offense under section 123.47 or chapter 321, and
14 to a crime that is a first offense of operating a motor vehicle
15 while intoxicated under section 321J.2, subsection 1.

16 Sec. 2. Section 135B.34, subsection 4, paragraph b, Code
17 2013, is amended to read as follows:

18 *b.* A person with a criminal or abuse record who is or was
19 employed by a hospital licensed under this chapter and is hired
20 by another licensee ~~without a lapse in employment~~ hospital
21 shall be subject to the criminal history and abuse record
22 checks required pursuant to subsection 1. ~~If~~ However, if an
23 evaluation was previously performed by the department of human
24 services concerning the person's criminal or abuse record and
25 it was determined that the record did not warrant prohibition
26 of the person's employment and the latest record checks do not
27 indicate a crime was committed or founded abuse record was
28 entered subsequent to that evaluation, the person may commence
29 employment with the other licensee ~~while~~ hospital in accordance
30 with the department of human services' evaluation of the latest
31 record checks is pending and an exemption from the requirements
32 in paragraph "a" for reevaluation of the latest record checks
33 is authorized. Otherwise, the requirements of paragraph "a"
34 remain applicable to the person's employment. Authorization
35 of an exemption under this paragraph "b" from requirements for

1 reevaluation of the latest record checks by the department of
2 human services is subject to all of the following provisions:

3 (1) The position with the subsequent employer is
4 substantially the same or has the same job responsibilities as
5 the position for which the previous evaluation was performed.

6 (2) Any restrictions placed on the person's employment in
7 the previous evaluation by the department of human services
8 shall remain applicable in the person's subsequent employment.

9 (3) The person subject to the record checks has maintained a
10 copy of the previous evaluation and provides the evaluation to
11 the subsequent employer or the previous employer provides the
12 previous evaluation from the person's personnel file pursuant
13 to the person's authorization. If a physical copy of the
14 previous evaluation is not provided to the subsequent employer,
15 the record checks shall be reevaluated.

16 (4) Although an exemption under this lettered paragraph "b"
17 may be authorized, the subsequent employer may instead request
18 a reevaluation of the record checks and may employ the person
19 while the reevaluation is being performed.

20 Sec. 3. Section 135C.33, subsection 2, Code 2013, is amended
21 by adding the following new paragraph:

22 NEW PARAGRAPH. *ob.* (1) If a person being considered for
23 employment, other than employment involving the operation
24 of a motor vehicle, has been convicted of a crime listed in
25 subparagraph (2) but does not have a record of founded child or
26 dependent abuse and the licensee has requested an evaluation
27 in accordance with paragraph "a" to determine whether the crime
28 warrants prohibition of the person's employment, the licensee
29 may employ the person for not more than sixty calendar days
30 pending completion of the evaluation.

31 (2) Subparagraph (1) applies to a crime that is a simple
32 misdemeanor offense under section 123.47 or chapter 321, and
33 to a crime that is a first offense of operating a motor vehicle
34 while intoxicated under section 321J.2, subsection 1.

35 Sec. 4. Section 135C.33, subsection 8, Code 2013, is amended

1 by adding the following new paragraph:

2 NEW PARAGRAPH. *Od.* (1) If a student's clinical education
3 component of the training program involves children or
4 dependent adults but does not involve operation of a motor
5 vehicle, and the student has been convicted of a crime listed
6 in subparagraph (2), but does not have a record of founded
7 child or dependent adult abuse, and the training program has
8 requested an evaluation in accordance with paragraph "c"
9 to determine whether the crime warrants prohibition of the
10 student's involvement in such clinical education component, the
11 training program may allow the student's participation in the
12 component for not more than sixty days pending completion of
13 the evaluation.

14 (2) Subparagraph (1) applies to a crime that is a simple
15 misdemeanor offense under section 123.47 or chapter 321, and
16 to a crime that is a first offense of operating a motor vehicle
17 while intoxicated under section 321J.2, subsection 1.

18 Sec. 5. STUDY OF BACKGROUND CHECK IMPROVEMENTS
19 AND REQUIREMENTS FOR CERTAIN PROVIDERS OF HOME HEALTH
20 SERVICES. The department of inspections and appeals, in
21 conjunction with the departments of administrative services,
22 human services, public health, and public safety, shall
23 study the potential for applying new technologies and
24 other improvements that may be implemented for the current
25 processes of performing and evaluating child and dependent
26 adult abuse and criminal record checks of persons providing
27 health care services. In addition, the study shall consider
28 applying record check requirements to individuals and
29 agencies providing home health services that are not subject
30 to certification, licensing, or other regulation by state
31 government. The department shall submit a report with findings
32 and recommendations to the governor and general assembly on or
33 before December 15, 2013.

34 EXPLANATION

35 This bill relates to evaluation of the results of certain

1 criminal record checks of prospective health care employees by
2 the department of human services (DHS).

3 Code sections 135B.34 and 135C.33, relating to criminal and
4 child or dependent adult abuse record checks of employees of
5 hospitals (135B.34) and health care facilities and certified
6 nurse aide student trainees (135C.33), are amended. Code
7 section 135B.34 is amended to conform with an amendment made
8 to Code section 135C.33 in 2012. Under the amendment, if a
9 person with a criminal or abuse record is or was employed by a
10 hospital and is hired by another hospital, the person remains
11 subject to another record check. However, if DHS previously
12 evaluated the record and determined the record did not warrant
13 prohibition of the person's employment, a reevaluation of the
14 record is not required if the conditions specified in the bill
15 are met. The conditions include that the new position is
16 substantially the same as the previous position, that any DHS
17 restrictions from the previous evaluation remain applicable,
18 and the employee either provides a physical copy of the
19 evaluation or the previous hospital provides it. Although
20 the exemption conditions are met, the new hospital may still
21 request a reevaluation of the record and employ the person
22 while the reevaluation is pending.

23 Both Code sections are amended to allow conditional
24 employment of prospective employees under certain
25 circumstances. In addition to nurse aide student trainees,
26 Code section 135C.33 applies to prospective employees
27 of nursing facilities, residential care facilities, and
28 intermediate care facilities for persons with mental illness or
29 a developmental disability, various in-home service providers,
30 hospices, Medicaid waiver service providers, elder group homes,
31 and assisted living programs.

32 Current law provides that if it is determined that a
33 person being considered for employment has been convicted of
34 a crime under a law of any state, the department of public
35 safety shall notify the licensee that upon the request of the

1 licensee DHS will perform an evaluation to determine whether
2 the crime warrants prohibition of the person's employment in
3 the facility.

4 The bill allows for conditional employment of not more than
5 60 calendar days of the prospective employee who was convicted
6 of a crime specified by the bill pending completion of the DHS
7 evaluation. The bill does not apply to employment involving
8 the operation of a motor vehicle or to persons with a record
9 of founded child or dependent adult abuse. The crimes covered
10 by the bill are limited to simple misdemeanor offenses under
11 Code section 123.47, involving purchase or possession of an
12 alcoholic beverage by a person who is not legal age, and
13 Code chapter 321, relating to motor vehicles and laws of the
14 road, and first offenses of operating a motor vehicle while
15 intoxicated under section 321J.2, subsection 1 (a serious
16 misdemeanor).

17 A similar new conditional employment exception is applied by
18 the bill to students applying for, enrolled in, or returning to
19 a certified nurse aide training program.

20 The department of inspections and appeals, in conjunction
21 with the departments of administrative services, human
22 services, public health, and public safety, is required
23 to study the potential for applying new technologies and
24 other improvements that may be implemented for the current
25 processes of performing and evaluating child and dependent
26 adult abuse and criminal record checks of persons providing
27 health care services. In addition, the study is required to
28 consider applying record check requirements to individuals and
29 agencies providing home health services that are not subject
30 to certification, licensing, or other regulation by state
31 government. The department is required to report with findings
32 and recommendations to the governor and general assembly on or
33 before December 15, 2013.